No. 12961.

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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UNITED STATES OF AMERICA, etc., *et al.*,
*Appellant and Respondent,*

*vs.*

CERTAIN PARCELS OF LAND IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, *et al.*,
*Defendants,*

and

RECONSTRUCTION FINANCE CORPORATION, Assignee of TREASURE COMPANY, THE ADAMANT COMPANY, WALTER B. SCOVILLE, JOE SEEPLE, HARRY WYNN, HERSCHEL BULLEN, MARY N. BULLEN, J. C. HAYWARD and MARY S. HAYWARD,
*Respondents and Cross-Appellants.*

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## Reply Brief of Adamant Company, Walter B. Scoville, Joe Seeple and Harry Wynn, Appellees.

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### Statement of Facts.

In this condemnation action the plaintiffs, United States Government and the Reconstruction Finance Corporation, presented their evidence first before the jury so far as these appellees are concerned.

The Government produced a large map in colors and then, after qualifying their expert witnesses, had them testify only to the "value of the working interests in Treasure Well No. 8."

The map distinctly set out the Fletcher leasehold (containing the well) in its own individual color, and same was pointed out to the jury by the Government witnesses, and same contained only three lots. The Government's expert witnesses testified that a city ordinance required an acre drill site, and hence the three lots were joined up with four lots, but that the royalty paid to the Herndon Community Lease by reason of the joining of the four lots for a drill site was paid to *all* of the *lots* of the Herndon Community Lease and not just the four.

About two years after the drill site was selected there was an action in the Superior Court of the County of Los Angeles, State of California, between Treasure Company, lessee, and these appellees. In that action it was finally adjudicated that Treasure Well No. 8 was located on the Fletcher Lease alone.

The Findings of Fact and Judgment of this Superior Court Action was introduced as Exhibit E into the evidence by these appellees before the jury, and the Government attorneys read considerable portions of said Findings to the jury.

The Government attorneys prepared the final verdict that was submitted to the jury in the case at bar, and the wording of said verdict was as follows:

> "H-1-W. I., being the total working interests in Treasure Company Well Treasure No. 8 $194,500.00." [R. p. 65.]

At the time that Judge Westover conducted the hearing allocating the jury award, he stated that there was no verdict submitted to the jury by the plaintiff asking for a valuation of working interests in the four lots of G. G. was designated on the map as the Herndon Community Lease, which comprised many lots including the four lots joined as a drill site to the Fletcher Lease.

The Reconstruction Finance Corporation is attempting in its Brief to change the picture placed before the jury and, like the United States Government in its Brief, trying to make it appear that by some process of imagination the jury verdict covers the four lots in G.

The final Judgment of the State Court referred to in the second Question presented by the Reconstruction Finance Corporation in its Brief at page 3, did not attempt to pass upon the four lots of the Herndon Lease.

The Reconstruction Finance Corporation under Question No. 3, page 4, of their Brief referred to a certain State Court Action attacking a Sheriff's Certificate of Sale.

There is nothing in the case at bar to show whether the State Court Action was filed before or after this condemnation suit. If the Counsel for the Reconstruction Finance Corporation looked up the record, he would discover that the State Court Action was filed *after* this condemnation suit was filed.

## ARGUMENT.

### The Three Questions Set Forth at Pages 3 and 4 of Appellant, Reconstruction Finance Corporation's Brief Are Based on Incorrect Premises and Incorrect Assumptions.

As to Question No. 1, the incorrect assumption is as follows:

> "Where a condemnation award is made by a jury for the 'total working interests' of a lessee under oil and gas leases covering realty on which a producing oil well is located. * * *."

The incorrect assumption is that the jury verdict said anything about leases.

The jury verdict prepared by the plaintiff, Reconstruction Finance Corporation itself, read as follows:

> "H-1, W. I., being the total working interests in Treasure Company Well Treasure No. 8, $194,-500.00."

Since the Reconstruction Finance Corporation is appearing as appellant in two capacities, we do not believe it necessary to re-print what we have already stated in our Reply Brief to the Brief filed by the United States Government and the Reconstruction Finance Corporation as Appellants.

We, therefore, refer to our Argument under the title:

> *"The picture drawn by the plaintiff before the jury is now binding upon the Government and the Reconstruction Finance Corporation."*

In fact, we believe our Reply Brief to the Government Brief clears most matters in this Brief filed by the Reconstruction Finance Corporation.

Question No. 2 is based on a false premise in that it fails to state that the Final Judgment of the State Court adjudicated that the well was located on *one* lease, to-wit: the three lots known as the Fletcher Lease. The pleadings in the State Court Action set forth the Fletcher Lease only and the State Court Judgment confirmed these appellees' ownership in Treasure Well *on the Fletcher Lease.*

The attempt in Question No. 2 to limit the jury verdict and split it into 3/7 and 4/7 is, of course, contrary to the wording of the verdict itself.

In Question No. 3 the Reconstruction Finance Corporation asked:

> "Is it not an improper preempting of jurisdiction on the part of the United States District Court in making distribution of the condemnation award to make a decision involving the ultimate rights of the parties litigant in a State Court Action?"

The above premise assumes that the State Court Action was filed *before* the condemnation action involved in the case at bar.

There is absolutely nothing in the record to sustain such an assumption and, in reality, it is contrary to fact.

* * * * * * * * *

The jury verdict in the case at bar was rendered May 13, 1949. The judgment upon the verdict was entered July 13, 1949. The rights of all the parties litigant were fixed by that judgment on the verdict and this *appellant, the Reconstruction Finance Corporation, filed no appeal* from that judgment on the verdict.

It is too late for it to question the rights determined by that verdict.

* * * * * * * * *

At page 9 the Reconstruction Finance Corporation states in its Brief as follows:

> "One of the holdings of the Vickers Judgment was that the plaintiffs in the action, the Adamant Company, Walter B. Scoville and their assigns, lost as of January 31, 1939, their respective interests under the contract in all leaseholds described in the contract other than the leasehold interest on which Treasure Well was located."

It is very debatable if the Vickers Judgment caused a loss to the Adamant Company and Walter B. Scoville of their interests in the Burns Lease No. 1, the Burns Lease No. 2 and Burns Lease No. 3.

The action in the Superior Court was not one to quiet title upon the Burns No. 1 Lease, nor the Burns No. 2 Lease nor the Burns No. 3 Lease. The action was for an accounting, an injunction and the appointment of a receiver, and the *pleadings* and the judgment *confined* the action to Lots 9, 10 and 11, Block 33 of Tract 9809, as recorded in Book 145, page 91 *et seq.,* of Maps, Records of Los Angeles County, State of California. [Finding II, Paragraph III of Judgment of Adamant's *et al.,* Exhibit "E"; R. p. 449.]

* * * * * * * * *

The Reconstruction Finance Corporation on page 9 of its Brief, quotes Paragraph I of the Vickers Judgment, which enjoins the plaintiffs in the State Court action from going upon the said Lots 9, 10 and 11 and does *not enjoin* their going upon any other leases.

There is no Finding or Judgment in the Superior Court case which cancelled the *written assignments* re-

ferred to in Finding XVI made by Judge Westover [R. p. 140].

However, it is not necessary in this appeal to consider or attempt to read into the Superior Court Findings and Judgment made by Judge Vickers any extraneous matter pertaining to Burns No. 1, No. 2, and No. 3 leases, *because the plaintiff in this condemnation action confined the valuation to be made by the jury to the working interests in Treasure Well No. 8 and prepared its form of verdict to such designation only, introduced a large map setting aside the three lots of the Fletcher Leasehold in one individual color, and failed to prepare a jury verdict asking the jury to place a valuation on the four lots of the Burn Sublease, known as G-3.*

Even the Government attorney, Mr. McPherson, distinctly stated that the jury would only value the working interests in Treasure Well No. 8. We quote Mr. McPherson [R. p. 727]:

> "Mr. McPherson: If your Honor will recall, the Government's case was put on *first out of order* to accommodate an absent witness, and at the time the Government's evaluation witnesses testified we had not as yet settled all of the claims for landowners' royalty. Accordingly, the Government's case was *put up in the fashion* that the *jury* would have been *required* to return their *verdict,* that is, the *value* of the *entire working interest,* and the value of the land owners' royalty. After those witnesses had testified, and during the progress of the case, the Fletcher and Burns' claims for landowners' royalties were settled and have been removed from the case, and the jury will not be required to return a verdict as to them. *The only interest requiring their adjudication is the working interest in Treasure 8.* It would seem to

me, therefore, more expedient and proper and more orderly, no matter what we may have said or done that has caused this confusion, to have their witness evaluate the interest which they claim, which is the working interest in Treasure 8. *That is what the jury's verdict will be.*"

* * * * * * * * *

At page 11 the Reconstruction Finance Corporation states in its Brief:

> "The jury trial before Judge Beaumont in no way concerned itself with the Vickers Judgment, inasmuch as the issue before the jury was the valuation of the lessees interest in the two leaseholds and the question of the distribution of the award as between the several co-defendants was not placed before the jury."

As Note 6 to the above quotation the Reconstruction Finance Corporation states as follows:

> "The Vickers Judgment was mentioned *incidentally* in argument [R. pp. 1079, 1104]."

*The above quotations are both incorrect.*

As heretofore stated the Reconstruction Finance Corporation and the Government confined the issue of valuation to the "working interests in Treasure Well No. 8," and hence that was the issue placed before the jury by the Government and the Reconstruction Finance Corporation.

The record shows that the Vickers Judgment was mentioned more than *incidentally* in the argument. The word "incidentally" is apparently intended to confuse the Court of Appeals.

The Counsel for the Government mentioned the Vickers Findings and Judgment at least *four* times in his argument [R. pp. 1079, 1088, 1089 and 1090].

At pages 1089 and 1090 the Government's attorney read from the Vickers Findings, and concluded his remark on page 1090 with the statement:

> "That is in the evidence before you and you may read it if you care to."

The attorney for these appellees, Adamant Company, Scoville, Seeple and Wynn, stated to the jury in his argument: "You have the Findings and the Judgment, * * *" [R. p. 1103], and then commented upon the Findings and Judgment of the state court.

This same attorney read from the Findings before the jury, as shown on pages 1104, 1105 and 1106 of this record [R. pp. 1104, 1105, 1106].

Another one of the Government's attorneys urged the jury to take the Superior Court Findings and Judgment, Adamant, *et al.'s* Exhibit "E" to the jury room and read it. Said attorney stated:

> "You can take that with you and I urge you to do it. *Read it* and see whether or not a single sole predicate laid by Mr. Willis, Dr. Willis, for the use by him of the volumetric method, isn't forever and forever foreclosed by the finding in the case between these people at a time when the Government was not interested, didn't even know it." [R. p. 1146.]

We submit the above quotations at page 11 of the Reconstruction Finance Corporation Brief, are not true as the issue before the jury was the valuation of working interests in Treasure Well (not in two leaseholds), and the Vickers Judgment and Findings were mentioned many times to the jury.

* * * * * * * * *

At page 24 the Reconstruction Finance Corporation stated in its Brief that:

> "there is no evidence in the record of the valuation trial to support the conclusion that the jury award of $194,500.00 was for the lessee's interest in the Fletcher Lease *alone* . . . that there was no testimony offered by any of the co-defendants to refute the fact that the leasehold for Treasure Well is made up of three lots comprising the Fletcher Lease, and four lots comprising the Burns No. 1 Lease." (This quotation is in substance.)

The defendants offered in evidence the Judgment of the Superior Court, which definitely and finally adjudicated the fact that Treasure Well No. 8 was located entirely on the Fletcher Lease of three lots.

It has not been denied that a city ordinance required at least an acre to constitute a drill *site* and, of course, no testimony was offered by the defendants to refute that situation. But later came the said Superior Court Judgment limiting the well to Fletcher Lease.

* * * * * * * * *

At page 25 of its Brief the Reconstruction Finance Corporation states:

> "Witnesses for both the Government and the co-defendants testified that the leasehold to be valued by the jury was approximately an acre in size and counsel for the co-defendants in the presence of the jury stated this to be a fact."

The above statement is misleading. Nobody testified that the leasehold to be valued was an acre in size. It was simply stated that the city ordinance required an *acre drill site.*

However, it was the attorneys for the Government and the Reconstruction Finance Corporation at the jury trial who *pinned down* their expert testimony of valuation to "working interests in Treasure Well No. 8."

Furthermore, after compliance with the city ordinance as to a drill site there occurred the Superior Court action, placing the well on three lots only.

We adopt Judge Westover's written opinion upon this point as follows:

> "A controversy now arises as to what is included in the leasehold; Treasure Company insists that the leasehold covers both the Fletcher and the Burns No. 1 leases, while Adamant Company and Walter B. Scoville, as assigns contend that the leasehold is restricted to the Fletcher Lease."

At the jury trial on April 5, 1949, when attempt was made to assess the value of the property of the parties hereto, evidently no thought was given to the fact that value was being established upon the leasehold rather than upon the well. *Most of the testimony concerned Treasure Well No. 8 and the working interest therein.* The jury's award was designated "working interest, Treasure Well No. 8." As a consequence, no one took the time or trouble to establish the extent of the leasehold on which the well was located. During the course of the trial a map was introduced in evidence, marked "Plaintiff's Exhibit 1," on which various parcels of land were indicated. "H-1 and W-I" were indicated on the map as referring to Lots 9, 10 and 11 of Block 33, Tract 9809, which is the Fletcher Lease. The Burns No. 1 Lease is marked on the map as "G-3."

Judge Vickers, in his Findings of Fact and Conclusions of Law, found specifically that

> "Treasure Company was the owner of an oil well and gas lease on that certain property upon which there was an uncompleted oil well located in the County of Los Angeles, State of California, described as follows:
>
> "Lots 9, 10 and 11 of Block 33, Tract 9809, as per map recorded in Book 145, page 91, *et seq.,* of Maps, Records of Los Angeles County, California."

He rendered judgment which, in part, enjoined plaintiffs from

> "going upon the lease upon which said oil well, 'Treasure No. 8,' is situated, which property is particularly described as follows, to-wit:
>
> "All that real property in the City of and County of Los Angeles, State of California, known and described as Lots 9, 10 and 11 of Block 33, in Tract 9809, as per map recorded in Book 145, page 81, *et seq.,* of Maps, records of said Los Angeles County, California."

When Judge Vickers in his Findings of Fact and Conclusions of Law, and Judgment, referred to Treasure Well No. 8, *it was always mentioned as being upon the Fletcher Lease. No reference* was made in either the Findings or the Judgment *to any other lease.*

We have reread the testimony given before the jury to attempt to ascertain whether or not the Burns No. 1 Lease was included in the award of $194,500.00, and we are *unable to find any indication* that the award was given for *any property except the premises known as the Fletcher Lease.* Inasmuch as all the witnesses referred

to the Fletcher Lease as "H-1, W-I." and it is so marked upon Plaintiff's Exhibit 1, we must find that the leasehold containing the well, Treasure No. 8, *is the leasehold of the Fletcher Lease* and does not include the Burns No. 1 Lease. (End of quotation from Judge Westover's opinion.)

* * * * * * * * *

At page 30 the Reconstruction Finance Corporation attempts in its Brief to divide the working interests in Treasure Well No. 8 in the proportion of three lots to seven lots.

The Reconstruction Finance Corporation and the Government introduced no evidence to establish the fact that Treasure Well No. 8 was producing any oil from the Burns No. 1 Sub-lease containing four lots, hence there is no substance to their argument that said four lots are entitled to 4/7 of the jury award.

In fact, the Superior Court Judgment, known as the Vickers Judgment, was *res adjudicata* to the effect that *Treasure Well No. 8 was located on the Fletcher Lease alone.*

The writer of this Brief admits that at the time he introduced his Exhibit "E" at the jury trial, the introduction of which occurred *after the Government* and the Reconstruction Finance Corporation had *confined* the valuation of its experts to the "working interests of Treasure Well No. 8," he then stated:

> "This is the complete Findings and Judgment in that case which defines the interests of the Adamant and Scoville [R. 449]."

The statement clearly meant that it defined the working interests of Adamant Company and Walter B. Scoville in Treasure Well No. 8 on the Fletcher leasehold *alone* because that was the basis of the valuation being considered by the jury as put into the evidence by the Government's witnesses *prior* to said statement.

As heretofore stated the Vickers Judgment, in our opinion, did not quiet title to any of the Burns' leases, however that issue is not involved under the jury verdict.

* * * * * * * * *

Point 3 at page 32 *et seq.,* the Reconsetruction Finance Corporation in its Brief claims that the District Court should not have preempted the jurisdiction of the California State Court in determining the ownership rights of Harry Wynn in the property condemned, for which condemnation the award stands.

**The Record Before the Court Fails to Show That the District Court Preempted the Jurisdiction of the California State Court in Determining the Ownership Rights of Harry Wynn in the Property Condemned for Which the Condemnation Award Stands.**

The Complaint in the case at bar was filed September 28, 1942, over nine years ago.

As a courtesy to a fellow attorney, we will attempt to assist the writer of the Brief of the Reconstruction Finance Corporation "solely as assignee." However, in assisting him we are compelled to nullify his Argument Point III contained at pages 32 to 36, inclusive, of his Brief.

The action pending in the Los Angeles Superior Court referred to in Finding XXXVI by Judge Westover

wasn't filed in the Superior Court until June 25, 1943. *This was nearly ten months after the case at bar was filed.*

It is apparent that the case at bar was filed *first* and hence could preempt no proceedings of the State Court.

The question of preempting the jurisdiction of the State Court was fully discussed by counsel for the Government, by the Court and by counsel for Adamant Company. Scoville, Seeple and Wynn, in the jury trial.

For such discussion we refer this Court to the printed record, pages 893, 894, 895 and 896.

At page 895 we quote what Judge Beaumont stated:

> "The Court: It is true, as Mr. Allen states, that all of the property of value within this area has been condemned, and *this is the time* for the defendants to present their evidence showing their interests. The Court would either have to pass upon it, even though it is the subject of litigation in the State Court, or would have to suspend the proceedings without prejudice to the defendant until the determination in the State Court. That was one of the things that the Court had in mind. The Court would be reluctant to do that without the consent of the defendant."

Furthermore, the same point was again raised and discussed by the Government counsel, the Court and counsel for Adamant Company, Scoville, Seeple and Wynn.

For discussion of said point see the following pages of this printed record: Pages 917, 918, 919, 920 and 921. The following is part of such discussion:

"The Court: Mr. McPherson, Mr. Wynn has been made a defendant in this action?

Mr. Allen: Against his will.

Mr. McPherson: Yes.

The Court: Why did you make him a defendant?

Mr. McPherson: That I could not tell you, sir. I did not draw the original petition.

The Court: *Well, you are here now to explain it.*

Mr. McPherson: He was in the category, I should say, of some four or five hundred other individuals who were named parties defendant in this case, whose interests have been mentioned to your Honor, and have no interest in the proceedings, and nothing has been done about it. In other words they were improperly joined. Why they were joined, I am not prepared to say, because that was some two or three years before I came here.

The Court: You think they were improperly joined?

Mr. McPherson: Yes, your Honor, I do.

The Court: *Do you move to dismiss the action then as to Mr. Wynn.*

Mr. McPherson: *No.*

The Court: Well, if they were improperly joined why should he not be dismissed?

Mr. McPherson: Because we are now on notice that he claims an interest, and I would not dismiss

a suit against any one who claims an interest simply because I do not think he has one.

The Court: *Well, the Government is responsible for the action?*

Mr. McPherson: *For having joined him, yes."* [R. pp. 917-918.]

The State Court Action referred to above was for an accounting on Harry Wynn's 6 per cent royalty, to set aside the fraudulent execution sale of one of the 2½ per cent royalties [R. p. 750], and contained a quiet title cause of action and a cause of action for money had and received.

*We submit that the record before this Court fails to show that the State Court Action preceded the case at bar.*

Had the authors of the Brief for the Reconstruction Finance Corporation solely as Assignee of Treasure Co., been present at the jury trial they would have observed that this question was raised by the Government attorneys and that Judge Beaumont, sitting with the jury, did not suspend actions for the purpose of requiring the said State Court action to proceed. The Counsel for the Reconstruction Finance Corporation failed to cite any authority to the effect that the Federal Court lacked jurisdiction in passing upon whatever interest Mr. Wynn had in the properties being condemned. In fact, Judge Beaumont permitted the introduction into the evidence of documents which sustained Mr. Wynn's interests, and Judge Westover simply followed this procedure and permitted further testimony as to those interests.

We do not deem it necessary to comment on the cases cited by the Reconstruction Finance Corporation under their Point 3, as their quotations from said cases clearly show no denial of jurisdiction in the Federal Court to pass upon Mr. Wynn's interest in the condemnation matter.

## Conclusion.

1. Judge Westover's decision that the jury award was for total working interests in Treasure Well No. 8, and that this stands for working interests in the Fletcher Lease alone and not in the Burns No. 1 Sub-lease, should be affirmed.

2. The Adamant Company is entitled to 25/80.6 per cents of the jury award; Walter B. Scoville is entitled to 16/80.6 per cents of the jury award, and Harry Wynn is entitled to 6/80.6 per cents of the jury award.

3. That the District Court did not preempt the jurisdiction of the California State Court in determining the ownership rights of Harry Wynn, but that said District Court had jurisdiction to settle all rights and interests of all litigants in the property being condemned by reason of the fact that they were brought into the action by the Government and Reconstruction Finance Corporation, and were thereby compelled to establish their interests.

Respectfully submitted,

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*Attorney for Adamant Company, Walter B. Scoville, Joe Seeple, Harry Wynn, Appellees.*